

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CHARIS S.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2010041367

**DECISION**

Administrative Law Judge Susan L. Formaker of the Office of Administrative Hearings heard this matter on February 23, 2011, in Bakersfield, California.

Charis S. (Claimant) was represented by her mother, Henrietta S.<sup>1</sup>

Jeffrey Popkin, Associate Director, represented Kern Regional Center (KRC or Service Agency).

At the close of the hearing, the Administrative Law Judge ordered the record to be left open until March 30, 2011, to allow Claimant's physicians to provide additional documentation pursuant to an agreed-upon request for information, and to allow Service Agency to respond thereto. Neither Claimant, her physicians, nor KRC submitted any post-hearing documentation, aside from the agreed-upon letter from KRC to Claimant's physicians requesting the additional documentation (which was marked as Exhibit 14 for identification).

Oral and documentary evidence having been received, the matter was deemed submitted for decision as of the close of business on March 30, 2011.

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<sup>1</sup> Claimant and her mother are identified by first name and last initial to protect their privacy.

## ISSUE

Whether Service Agency is required to continue funding Claimant's rental car services to attend medical appointments at the UCLA Medical Center in light of the enactment of Welfare and Institutions Code section 4648.35 and considering her regional center eligible condition.<sup>2</sup>

## FACTUAL FINDINGS

### *I. Jurisdictional Facts*

1. Claimant is a 10-year-old Service Agency consumer with a so-called "fifth category" eligible condition; that is, she suffers from a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation. (See § 4512, subd. (a).) She lives at home with her mother in a remote location serviced by KRC.

2. On March 10, 2010, KRC sent a Notice of Proposed Action ( Exhibit 4) to Claimant and her mother stating the funding for transportation for Claimant's medical appointments would be "den[ied]" effective April 12, 2010 , based upon the enactment of section 4648.35 and because the services are not related to her regional center eligible condition.<sup>3,4</sup> Section 4648.35 is part of what has been referred to as the "Trailer Bill," which was enacted in reaction to the state's fiscal crisis and reduces or suspends the availability of certain services through regional centers.

3. Claimant's mother filed a fair hearing request (Exhibit 3) dated March 25, 2010, seeking Service Agency's continued funding of Claimant's transportation services. This fair hearing request was filed beyond the period for which aid pending the hearing was required to be funded. Nevertheless, pending the hearing of this matter, and pursuant to an agreement reached at an informal meeting between the parties and agreed continuances, Service Agency approved funding for Claimant's rental car costs between her home and UCLA Medical Center in Los Angeles for two biannual medical appointments.

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<sup>2</sup> All citations are to the Welfare and Institutions Code unless otherwise indicated.

<sup>3</sup> Claimant waived her right to have a fair hearing within 50 days of the date Service Agency received her fair hearing request and her right to have a final administrative decision rendered within 80 days of the date Service Agency received the request.

<sup>4</sup> Although the Notice of Proposed Action referred to a denial of services, in fact the services were being discontinued.

## *II. Claimant's Disabilities and Need for Transportation Services*

4. Claimant is her mother's only child. Her father is deceased. Other than her mother, Claimant has no family living nearby. Claimant has a support system of family friends and neighbors who help Claimant's mother with her care in or near the family home.

5. Claimant suffers from intellectual and adaptive skills deficits deemed sufficient by Service Agency to qualify her for regional center services. She does not engage in interaction with others, uses simple statements of one or two words when she communicates, and is sometimes destructive and aggressive. She has emotional outbursts at least once a week requiring intervention, and she runs or wanders away approximately once each month.

6. Claimant also suffers from Glycogen-Storage Disease, type 1b, a rare, inherited metabolic condition. This condition predisposes Claimant to acute episodes of hypoglycemia, or low blood sugar. Her blood glucose levels can change very quickly, particularly if she is under stress, such as with an infection or fever. If she becomes hypoglycemic, her "biochemical abnormality causes deterioration of the nervous system manifested initially by lethargy, sweating and weakness, which progress rapidly to even coma and seizures." (Exhibit A [letter dated February 7, 2011, from Eric Vilain, M.D., Ph.D., and Irene Lin, M.S., R.D., at UCLA].) As a result, Claimant's blood glucose level must be monitored constantly. She is fed almost exclusively via a gastrostomy tube (g-tube) placed in her stomach. Despite close monitoring and gastrostomy feedings every three hours, Claimant has experienced episodes of energy decompensation, resulting in seizures and hospitalization. This occurred in September 2008, and again in August 2009. The fact that Claimant's immune system is somewhat compromised makes her especially susceptible to additional episodes of acute hypoglycemia.

7. Claimant's Glycogen-Storage Disease requires close follow-up at the UCLA Metabolic Clinic, with visits at least every six months. During her visits, she is seen by a team including a physician, dietician, nurse, and social worker. At the UCLA Metabolic Clinic, Claimant's dietary needs are monitored and she receives routine laboratory and other tests. California Children's Services, an entity that provides, and has provided, services to Claimant (including her formula for g-tube feedings) requires this routine monitoring by the team at UCLA. According to her UCLA team, Claimant must "be followed in order to avoid any metabolic decompensation which could lead to mental retardation. She is at risk for cognitive deficits if her glycogen storage disease is not well controlled and she has had events in the past where this has occurred." (Exhibit A.)

8. California Children's Services will provide bus tickets or gasoline money to Claimant and her mother to assist with transportation for the UCLA medical appointments. However, there is no bus from Bakersfield (the closest large community to Claimant's home) to UCLA. Moreover, bus travel for the trip (a one-way distance of over 100 miles) could not be used by Claimant, as she would likely need a g-tube feeding during the trip. Driving could theoretically provide Claimant with the flexibility she needs to receive a g-tube feeding

on the way to UCLA (with Claimant's mother being required to pull over to the side of the road to monitor Claimant's glucose levels and provide any needed feedings). As a practical matter, though, driving Claimant in the family car is not an option that Claimant's mother believes is safe. Claimant's mother's automobile is very old (a 1982 model), has been driven for over 100,000 miles, and is unreliable. Claimant's mother contends that if her automobile breaks down on the way to UCLA, and Claimant experiences acute hypoglycemia, she could die before being transported to a hospital. Accordingly, Claimant's mother asserts that the only reasonably safe option is to rent a car for transportation to Claimant's appointments at UCLA.

9. To protect her from illness, and because of her need for constant monitoring and g-tube feedings, Claimant is home-schooled by her mother. The only family income consists of Claimant's disability income of \$737 per month. Claimant's mother is not eligible to receive In-Home Supportive Services payments as a care provider for Claimant or other public benefits because of her immigration status. Claimant's mother also cannot work outside the family home because of the demands of Claimant's care and Claimant's need for home schooling. As a result, Claimant's mother cannot afford to pay for a rental car.

10. Service Agency has paid for Claimant's rental car services for her appointments at UCLA, with the last authorization for such payments being included in Claimant's Individual Program Plan (IPP) from December 2008. KRC authorized the payment of Claimant's rental car services to support Claimant's IPP objective of "maintain[ing] and/or improv[ing] her current level of health." (Exhibit 6B, at pp. 3-4.) KRC contends that, even though it was not clear that Claimant's eligible fifth-category condition originated from Claimant's metabolic condition, it had interpreted the Lanterman Act liberally to allow funding of Claimant's rental car costs. There was no testimony or documentary evidence to support the assertion that Claimant's rental car costs were funded by virtue of any particular interpretation of the Lanterman Act.

11. During the December 2009 annual review of Claimant's IPP goals and objectives, KRC asserted for the first time that the funding for transportation costs was only available for those needs directly related to Claimant's eligible condition. KRC appears to contend that the Trailer Bill language in section 4648.35 clarified the intent of the Lanterman Act to cover only limited transportation services directly related to a consumer's regional center eligible condition.

12. Findings 6 and 7 establish, by a preponderance of the evidence, that Claimant's medical appointments at UCLA are required to monitor and treat Claimant's Glycogen-Storage Disease. Claimant's mother testified during the hearing that she understands Claimant's Glycogen-Storage Disease to be the cause of Claimant's fifth category condition. None of the available evidence conclusively establishes that Claimant's Glycogen-Storage Disease caused Claimant's intellectual and/or adaptive skills deficits (although the evidence indicates her constant medical care may exacerbate her already poor socialization skills). Despite being given the opportunity after the hearing to provide an opinion regarding the relationship between Claimant's Glycogen-Storage Disease and her

regional center eligible condition, Claimant's UCLA physicians failed to do so. Nevertheless, the facts that: 1) Claimant's team at UCLA noted that Claimant may suffer from cognitive deficits and mental retardation from episodes of decompensation, 2) Claimant has, in fact, suffered from such episodes in the past, and 3) Claimant has intellectual and adaptive skills deficits sufficient to render her eligible for regional center services under the fifth category, together establish, by a preponderance of the evidence, that Claimant's Glycogen-Storage Disease is related to her regional center eligible condition. Moreover, the fact that Service Agency funded such services in the past reflects that Service Agency determined that Claimant's rental car services were an appropriate service and support for Claimant's regional center eligible condition.

### LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.)

2. The standard of proof in this matter is a preponderance of the evidence, because no other law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.) A preponderance of the evidence requires the trier of fact to determine that the existence of a fact is more probable than its nonexistence. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

3. Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The development and implementation of individual program plans is a cornerstone of the regional center's responsibilities to the consumer. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports the consumer needs in order to achieve the goals set forth in the Lanterman Act. (§§ 4646, 4646.5, and 4648.) The Legislature's intent is that IPPs should address the needs and preferences of the consumer and the family, through a collaborative process, in order to provide consumers with the opportunity to live independent and productive lives. (§§ 4646, 4646.5.) The services and supports are to be "flexible and individually tailored to the consumer and, where appropriate, his or her family." (§ 4648, subd. (a) (2).)

4. Section 4512, subdivision (b), defines the services and supports that may be identified and funded through the IPP process:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of

an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.

Services and supports may include transportation services necessary to ensure delivery of services to persons with developmental disabilities. (§ 4512, subd. (b).)

5. Individual program plans “shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person’s achievement or changing needs . . . ” (§ 4646. 5, subdivision (b).)

6. Through the IPP process prior to December 2009, KRC and Claimant’s mother determined rental car services were appropriate services and supports to address Claimant’s needs. (Finding 10.) Claimant’s mother cannot afford to pay for rental car services, and the other transportation services available to Claimant are either impractical or dangerously unreliable for Claimant’s well-being. (Findings 8 and 9.)

7. In its Notice of Proposed Action, Service Agency asserted that section 4648.35 provides a basis for the cessation of funding for Claimant’s rental car services for her UCLA medical appointments. Section 4648.35 provides as follows:

Effective July 1, 2009, at the time of development, review, or modification of a consumer's individual program plan (IPP) or individualized family service plan (IFSP), all of the following shall apply to a regional center:

(a) A regional center shall not fund private specialized transportation services for an adult consumer who can safely access and utilize public transportation, when that transportation is available.

(b) A regional center shall fund the least expensive transportation modality that meets the consumer’s needs, as set forth in the consumer’s IPP or IFSP.

(c) A regional center shall fund transportation, when required, from the consumer’s residence to the lowest-cost vendor that provides the service that meets the consumer’s needs, as set forth in the consumer’s IPP or IFSP. For purposes of this subdivision, the cost of a vendor shall be determined by combining the vendor’s program costs and the costs to transport a consumer from the consumer’s residence to the vendor.

(d) A regional center shall fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child.

8. There is no definition in section 4648.35 of the term “unable to provide transportation.” However, that phrase is reasonably construed to include situations, among others, where a minor child’s family is financially unable to pay for transportation services or otherwise to obtain needed services through agencies outside the regional centers.

9. Claimant’s mother’s financial status and the lack of practical or reliable alternatives to rental car transportation satisfy the requirement, set forth in section 4648.35, subdivision (d), that Claimant be unable to provide transportation services. Service Agency did not argue that other, less costly alternatives, or generic services or services provided by other agencies, are available that would meet Claimant’s needs. The real issue, then, is whether Service Agency could terminate Claimant’s rental car services for her UCLA medical appointments, under section 4648.35 or otherwise, based on a belated assertion that the rental car services are not related to Claimant’s regional center eligible condition.

10. Section 4648.35 does not explicitly address whether the need for transportation services must arise from a regional center eligible condition. Nevertheless, the definition of “services and supports” under the Lanterman Act, as set forth in Legal Conclusion 4, is inherently focused on having the regional centers provide assistance with a developmental disability or its effects. Without such a construction, the regional centers could be deemed responsible for a developmentally disabled child’s every need, including housing, clothing, and all kinds of care, regardless of whether such needs were related in some way to the developmental disability. Indeed, effective September 1, 2008, regional centers are to ensure adherence with federal and state law and regulation when developing or reviewing an IPP, including “[c]onsideration of the family’s responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer’s service and support needs as provided in the least restrictive and most appropriate setting.” (§ 4646.4, subd. (a) (4).) “In this determination, regional centers shall take into account the consumer’s need for extraordinary care, services, supports and supervision, and the need for timely access to this care.” (*Ibid.*) Service Agency continued to authorize and fund Claimant’s rental car services, despite this statutory restriction of services, after it was made effective in September 2008. (Finding 10.)

11. The fact that KRC authorized and funded Claimant’s rental car services after September 2008 reflects KRC’s determination that Claimant’s rental car services were an appropriate service and support for Claimant’s regional center eligible condition--a condition requiring services and supports in excess of those for a minor child without developmental

disabilities.<sup>5</sup> Moreover, Claimant established, by a preponderance of the evidence, that there is a relationship between Claimant's regional center eligible condition and her Glycogen-Storage Disease. (Finding 12.) Accordingly, KRC must continue to fund Claimant's rental car services for her appointments at the UCLA Medical Center.

### ORDER

Claimant's appeal is granted. Service Agency shall continue funding Claimant's rental car services as necessary to attend her appointments at the UCLA Medical Center.

Dated: April 18, 2011

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SUSAN L. FORMAKER  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE:

**This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**

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<sup>5</sup> Section 4646.4, subdivisions (a) (2) and (a) (3), also require "[u]tilization of generic services and supports when appropriate" and [u]tilization of other services and sources of funding as contained in Section 4659." Legal Conclusion 9 shows that neither generic services nor other services and sources of funding were appropriate for Claimant's transportation needs.